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In the
Supreme Court of the United States

OCTOBER TERM, 1976

Nos. 76-1159 and 76-1416

ARTHUR F. QUERN, ACTING DIRECTOR,
ILLINOIS DEPARTMENT OF PUBLIC AID, ET AL.,
PETITIONERS
v.
VENUS MANDLEY, INDIVIDUALLY AND ON BEHALF OF
ALL OTHERS SIMILARLY SITUATED,
RESPONDENTS

JOSEPH A. CALIFANO, JR., SECRETARY OF HEALTH,
EDUCATION AND WELFARE,
PETITIONER
v.
VENUS MANDLEY, INDIVIDUALLY AND ON BEHALF OF
ALL OTHERS SIMILARLY SITUATED,
RESPONDENTS

ON WRITS OF CERTIORARI TO THE
UNITED STATES COURT OF APPEALS FOR THE SEVENTH CIRCUIT

Amicus Curiae Brief of the Commonwealth of Massachusetts

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Interest of the Amicus

The Commonwealth of Massachusetts submits this amicus curiae brief to reinforce the position of the states of Illinois, New Jersey, Pennsylvania, and the United States Department of Health, Education, and Welfare that federal law permits the states wide discretion to determine eligibility

criteria and set benefits levels applicable to the Emergency Assistance program authorized by title IV-A of the Social Security Act. Massachusetts operates a wide-ranging set of social welfare programs, the expenditures for which account for approximately 25 per cent of its annual budget. In recent years, its ability to control welfare costs has diminished substantially. Not only have large programs like Medicaid and AFDC experienced substantial cost escalation, but the lower federal courts have determined with increasing frequency that federal law restricts significantly — and expensively — one aspect or another of the states' traditional discretion to administer their welfare programs. The Commonwealth believes that furtherance of the national interest in the social welfare area depends upon proper recognition of the importance of state discretion and that its Emergency Assistance program provides a good example of the distortion which erroneous interpretations of the Social Security Act can introduce into the operation of state welfare systems.

The Commonwealth began participating in title IV-A's Emergency Assistance program in 1968. The program was designed to meet the immediate needs of applicants for public assistance and respond to emergencies which recipients and non-recipients might experience (e.g., fire, eviction, utility terminations, etc.). The program provided a wide range of benefits, ranging from cash assistance to emergency shelter to social services counselling. Rising costs, related perhaps to alterations in other assistance programs as well as the general economic inflation, forced the Commonwealth to impose limitations on the amount of certain benefits (e.g., payments for rent and utility arrearages). Invalidation of these limitations in *Ingerson* v. *Sharp*, 423 F. Supp. 139 (D. Mass. 1976), *appeal argued* May 3, 1977, caused the Commonwealth to withdraw temporarily from

the Emergency Assistance program. While Massachusetts has renewed its participation, its Department of Public Welfare is considering various ways to restructure emergency assistance to meet the District Court's requirements, achieve program objectives, and maintain costs within budgetary limits. The Commonwealth's continued ability to provide emergency assistance under title IV-A may depend upon whether this Court rejects the course which the lower federal courts have taken and interprets the Act to permit the states broad latitude in the operation and funding of their emergency assistance programs.

Argument

THE SOCIAL SECURITY ACT DOES NOT IMPOSE A FEDERAL ELIGIBILITY STANDARD FOR THE EMERGENCY ASSISTANCE PROGRAM UPON THE STATES.

I. *Section 406(e)(1) Is Merely A Limitation Upon The Secretary Of The Treasury's Duty To Reimburse The States For Expenditures As Emergency Assistance Imposed By Section 403(a)(5).*

Proper interpretation of the Social Security Act (Act) depends upon careful observation of its architecture. Although Congress has amended the statute often and substantially since its passage in 1935, its structure has exhibited remarkable endurance. Title IV-A of the Act, codified as subchapter IV, part A, §§ 601-610, of the United States Code, exhibits the now classic style of the Act's draftsmen: § 401 embodies a subsidiary statement of purpose and authorizes appropriations for payments to the states; § 402

establishes state plan requirements and directs the Secretary of Health, Education, and Welfare (HEW) to approve plans which meet these requirements; § 403 requires the Secretary of the Treasury to reimburse the states for certain portions of their expenditures as, among other things, "emergency assistance"; § 404 requires the Secretary of HEW to suspend payments after notice and hearing (the so-called "conformity hearing") upon a determination that a state has effected unlawful modifications in its state plan or has failed to administer it in substantial compliance with the state plan requirements contained in § 402; and § 406 provides definitions of selected terms, including "emergency assistance." Appreciation of this framework, replicated in the structure of other contemporaneous titles[1] and mirrored in that of more recent enactments,[2] provides a firm foundation for sound judicial interpretation.

The lower federal courts agree that the states are not required to operate emergency assistance programs. E.g., *Williams* v. *Wohlgemuth*, 540 F. 2d 163, 165 (3d Cir. 1976); *Mandley* v. *Trainor*, 523 F. 2d 415, 418 (7th Cir. 1975). This result follows from a review of § 402(a): the term "emergency assistance" does not appear in it, and § 402(a) is the only section in title IV-A of present concern which imposes requirements upon the states. *Williams* v. *Wohlgemuth*, *supra* at 165, n. 3. The term "emergency assistance" does appear, however, in § 403 in the following context:

> (a) From the sums appropriated therefore, the Secretary of the Treasury shall (subject to section 1320b of this title) pay to each state which has an approved plan for aid and services to needy families with children, for each quarter, beginning with the quarter commencing October 1, 1958 —
>
> . . . . . .
>
> (5) in the case of any State, an amount equal to 50 per centum of the total amount expended under the State plan during such quarter *as emergency assistance* to needy families with children [emphasis supplied].

[1] E.g., titles VI, X, and XIV.

[2] E.g., titles XIX and XX.

This provision of § 403, considered without reference to the definition contained in § 406(e)(1), would have the following narrow and specific effect: to require the Secretary of the Treasury to reimburse the states for 50 per cent of their expenditures "as emergency assistance," a potential liability of undefined but presumably substantial dimensions. And that is all it would do. Absent § 406(e)(1) or valid HEW regulations, the Commonwealth submits that § 403 (a)(5) could not support any of the interpretations with which the lower federal courts would embellish its simple lines. See, e.g., *Williams* v. *Wohlgemuth*, *supra*, at 168-69; *Mandley* v. *Trainor*, *supra*, at 420.

Congress, however, was aware of the need to limit the federal government's obligation to pay for "emergency assistance." Moreover, it conceived of the program as one designed to solve rather specific problems. See e.g., S. Rep. No. 744, 90th Cong., 1st Sess. 165, *reprinted in* [1967] U.S. Code Cong. & Admin. News 2834, 3002-04 (states need ability to provide immediate assistance in crisis without necessity for usual AFDC determinations and payment procedures). The logical and traditional tool of legislative design which the draftsmen used both to limit financial liability and guide states in the structuring of their programs

was the definition.[3] It is these two purposes, and only these, which the Commonwealth submits Congress intended § 406(e)(1) to serve.

Section 406(e)(1) defines the term "emergency assistance" appearing in § 403(a)(5) as follows:

> (e)(1) The term "emergency assistance to needy families with children" means any of the following, furnished for a period not in excess of 30 days in any 12-month period, in the case of a needy child under the age of 21 who is (or, within such period as may be specified by the Secretary, has been) living with any of the relatives specified in subsection (a)(1) of this section in a place of residence maintained by one or more of such relatives as his or their own home, but only where such child is without available resources, the payments, care, or services involved are necessary to avoid destitution of such child or to provide living arrangements in a home for such child, and such destitution or need for living arrangements did not arise because such child or relative refused without good cause to accept employment or training for employment —
>
> (A) money payments, payments in kind or such other payments as the State agency may specify with respect to, or medical care or any other type of remedial care recognized under State law on behalf of, such child or any other member of the household in which he is living, and
>
> (B) such services as may be specified by the Secretary;

[3] See R. Dickerson, The Fundamentals of Legal Drafting, chs. 5 & 7 (1965).

> but only with respect to a State whose State plan approved under section 602 of this title includes provision for such assistance. . . .

Like the Act, analyzing the structure of this definition is the best way to understand its meaning. The operative language begins in the second line with the words "any of the following . . .," but, like much modern architecture, considerations of form immediately succumb to functional demands: Congress, most concerned with financial liability, immediately introduces limitations upon the Secretary of the Treasury's duty to reimburse the states by determining what "emergency assistance" *is not* and *excluding* from the meaning of "emergency assistance," among other things, state payments furnished for a period in excess of 30 days in any 12-month period, state payments furnished to others than needy children under 21 living with certain relatives who have no available resources and for whom assistance is necessary to avoid destitution, and state payments furnished to children whose destitution is a result of their or their relatives' failure to accept employment. Only after this primary concern is satisfied does the definition proceed to state what "emergency assistance" *is*:

> (A) money payments, payments in kind, or such other payments *as the State agency may specify* with respect to, or medical care or any other type of remedial care recognized under State law on behalf of, such child or any other member of the household in which he is living, and
>
> (B) such services as may be specified by the Secretary . . . [emphasis supplied].

Thus, paragraph A defines "emergency assistance" to require the Secretary of the Treasury to reimburse "money payments, payments in kind, or such other payments as the State agency may specify . . .," provided only that the expenditures are not made in violation of subdivision (1)'s introductory limitations and, of course, are made "as emergency assistance" under an approved state plan.

One observes the structure of this definition without finding a basis for asserting that it imposes a federal eligibility standard. Such invisibility is surprising, for good architecture is generally quick to proclaim its purposes.[4] The Commonwealth believes that the preferable, indeed elegant, explanation for the absence of language imposing a federal standard is that Congress did not intend to subject the states to one. Any other view must struggle against the discretionary language in paragraph A (emphasized in the reproduction above), the placement of the program's sole authorizing language in § 403 rather than § 402, and Congress's concept of the program as a flexible, voluntary source of financial assistance to the states. The Commonwealth maintains that such a challenge to the Act's structure is unwarranted under any acceptable theory of interpretation and that the reason the lower federal courts have undertaken it stems from an unfortunate misunderstanding of this Court's decisions under § 402(a)(10) of the Act, as the argument in the following section demonstrates.

[4]See generally, L. Sullivan, The Tall Office Building Artistically Considered, Lippencott's Magazine (March, 1896) (containing the statement which represents a fundamental premise of modern architecture that "Form ever follows function").

II. *The Lower Federal Courts Have Mistakenly Applied This Court's Decisions Under § 402(a)(10) To Cases Involving The Emergency Assistance Program.*

Almost ten years ago, this Court began developing novel federal common law under the Social Security Act. The progenitor of what is now a respected lineage was Mr. Chief Justice Warren's opinion in *King* v. *Smith*, 392 U.S. 309 (1968), which gave birth to the concept of federal eligibility standards for federally supported, state administered welfare programs. *King's* crucial holding, for present purposes, appears at page 317:

> The plan must conform with several requirements of the Social Security Act and with rules and regulations promulgated by HEW. 49 Stat. 627, as amended, 42 U.S.C. § 602 (1964 ed., Supp. II) . . .
>
> One of the statutory requirements is that "aid to families with dependent children . . . *shall be furnished* with reasonable promptness *to all eligible individuals* . . .." 64 Stat. 550, as amended, 42 U.S.C. § 602(a)(9) (1964 ed., Supp. II). As noted above, § 406(a) of the Act defines a "dependent child" at one who has been deprived of "parental" support or care by reason of the death, continued absence, or incapacity of a "parent." 42 U.S.C. § 606(a) (1964 ed., Supp. II). *In combination these two provisions of the Act clearly require participating States to furnish aid to families with children who have a parent absent from the home, if such families are in other respects eligible* . . . [emphasis supplied].

As the Chief Justice went on to reiterate and later cases emphasized, states may not define terms used to determine

eligibility for AFDC benefits in a manner which results in the denial of benefits to persons whom the Act renders eligible and, through § 402(a)(10), requires states to provide assistance. *King* v. *Smith, supra*, at 333. *Burns* v. *Alcala*, 420 U.S. 575, 578 (1975); *Townsend* v. *Swank*, 404 U.S. 282, 285 (1971).

Appreciation of the Act's structure leads to an understanding of the source of the lower courts' error. Section 402 is the section which imposes obligations upon the states. However, its provisions generally do not govern the emergency assistance program. In particular, subdivision 402(a)(10), the source of *King* and its progeny, does not apply to emergency assistance. *Williams* v. *Wohlgemuth*, 540 F. 2d 163, 169 (3d Cir. 1976). Hence, as the Third Circuit but not the Seventh has determined, this Court's decisions descended from *King* do not justify the interpretations of §§ 403(a)(5) and 406(e)(1) which the lower federal courts have reached. *Williams* v. *Wohlgemuth, supra*, at 169; *contra, Mandley* v. *Trainor*, 523 F. 2d 415, 422 (7th Cir. 1975). Moreover, as previously argued, observation of the statute's architecture obviates the need to review extrinsic evidence of Congressional intent and leads to the conclusion that Congress did not intend to impose federal eligibility standards upon state emergency assistance programs. Therefore, this Court should decide that states are free to determine eligibility criteria for their emergency assistance programs which they conclude are best suited to their individual situations.

Conclusion

For the reasons set forth above, the Court should reverse the Seventh Circuit's decision and declare that the Social

Security Act does not impose a federal eligibility standard for the emergency assistance program upon the states.

Respectfully submitted,

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